# APPENDIX

FEDERAL MINE SAFETY AND HEALTH REVIEW
COMMISSION OFFICE
OF ADMINISTRATIVE LAW JUDGES

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CONTEST PROCEEDINGS

Docket Nos.: CENT 2000-122-M
through CENT 2000-132-R
Docket No.: CENT----------
Docket No.: CENT----------

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KAISER ALUMINUM & CHEMICAL CORP.,
*Contestant*,

vs.

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION,
*Respondent*,

Citation Nos.:
7881936 through 7881956
Mine: Gramercy Works

UNITED STEELWORKERS OF AMERICA,
*Intervenor*,

and

CRAIG PRICE,
*Intervenor*

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PENALTY PROCEEDINGS

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Docket Nos. CENT 2000-200-M
& CENT 2000-201-M
AC Nos. 16-00352-05573 & 16-00352-05573

Docket Nos. CENT ----------
& CENT ----------
Mine: Gramercy Works

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SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION,
*Petitioner*

VS.

KAISER ALUMINUM & CHEMICAL CORP.,
*Respondent*

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## SECRETARY'S AMENDED MOTION TO APPROVE SETTLEMENT AND MOTION TO DISMISS

The Secretary of Labor, United States Department of Labor (Secretary) moves for an Order approving the proposed settlement agreement which the parties have reached with respect to the above captioned matters. In summary, Kaiser has agreed to withdraw its contest of the below-listed citations/orders and pay penalties in the amount of $513,000. The Secretary has agreed to vacate the remainder of the citations and orders at issue in the remaining dockets. In addition, the Secretary has issued two additional orders which Kaiser has contested and for which Kaiser agrees to pay penalties in the amount of $72,000 which is included in the total penalty payment of $513,000. Finally, two individuals have agreed to settle and pay $12,500 each in civil penalties assessed pursuant to Section 110(c) of the Mine Act, for violations which they had reason to know existed. The additional orders and the penalties under Section 110(a) and (c) have been assessed and contested by the Respondents. The Petitions for Assessment are being filed, and answered, and the cases are now being settled as part of this total global settlement between the Secretary of Labor, Kaiser Aluminum and Chemical Corporation, and the individual Respondents.

1. This case involves an investigation subsequent to an explosion that occurred on the morning of July 5, 1999 at the Gramercy Works Facility. A significant number of miners at the mine were injured, three of whom sustained severe disabling injuries. The Gramercy Works Facility is an alumina processing facility located in Gramercy, Louisiana. Although contested earlier in a public hearing subpoena challenge and retained as an issue for review in Kaiser's Petition for Certiorari (214 F.3d 586 (5th Cir. 2000)), for purposes of resolving this matter, the parties have agreed that the Gramercy Works Facility is a "mine" as defined under

Section 3(h) of the Mine Act. This mine was operated by Kaiser Aluminum and Chemical Corporation.

2. MSHA inspectors and investigators investigated the July 5, 1999 explosion. They concluded that the immediate cause of the explosion was an excessive pressure build up in pressure vessels in the digestion process area of the facility, following an electrical fault causing a power distribution failure, and the response thereto. MSHA found deficiencies in the pressure relief safety systems, which MSHA concluded were violations of the regulations. Several of the deficiencies were voluntarily disclosed to MSHA and other government agencies by Kaiser in a letter dated August 5, 1999. These conditions were set forth in the MSHA investigative report. MSHA also issued other citations and orders for violations of the regulations which took place during the investigative proceeding. See MSHA investigative report and the additional conclusions and amendments in this settlement agreement.

3. The Secretary and Kaiser have agreed to settle these matters. MSHA is agreeing to modify certain negligence level findings, and a gravity finding in one order and to vacate four orders, and Kaiser has agreed to pay agreed upon sums for the remaining citations and orders. Below is a list of the citations and orders and the disposition that the parties have agreed to:

| Citation or Order | Alleged Negligence | Modifications Agreed Upon Penalty |
|---|---|---|
| 7881936 | High | $52,000 |
| 7881937 | High | $52,000 |
| 7881938 | High | $52,000 |
| 7881939 | No changes | $52,000 |
| 7881940 | High | $52,000 |
| 7881941 | High | $52,000 |
| 7881942 | vacated | N/A |

| Citation or Order | Alleged Negligence | Modifications Agreed Upon Penalty |
|---|---|---|
| 7881943 | vacated | N/A |
| 7881944 | High | $2,500 |
| 7881945 | High | $2,500 |
| 7881946 | High | $2,500 |
| 7881947 | High | $2,500 |
| 7881948 | vacated | N/A |
| 788194 | Moderate | $14,000 |
| 7881950 | Moderate and Non-contributory | $10,000 |
| 7881951 | Moderate | $14,000 |
| 7881952 | Moderate | $14,000 |
| 7881953 | no change | $16,000 |
| 7881954 | no change | $16,000 |
| 7881955 | no change | $16,000 |
| 7881956 | vacated | N/A |
| 7885803 | no change | $10,000 |
| 7885804 | no change | $9,000 |
| 7718310 | no change | $52,000 |
| 7718308 | no change | $20,000 |

With respect to the violations of 30 C.F.R. § 48.27(c) (Orders No. 7881949, 7881950, 7881951, 7881952), the reduction in negligence and modification of the violations to Section 104(a) citations, except for Order No. 7881950, acknowledges that proper emergency procedures task training is beyond that specifically required by other provisions of Part 48. The Secretary further determined that the digestion control room operator's conduct addressed in Order No. 7881950 did not contribute to the accident. Finally, the Secretary notes that each of the miners involved in these violations had training that was otherwise in compliance with 30 C.F.R. Part 48.

On October 26, 2000, two additional citations (No. 7718310 and 7718308) were issued for violative conditions.

MSHA proposed a civil penalty of $52,000 for one, and $20,000 for the other. Kaiser concurrently contested the citations and moved for consolidation with this case, and the penalties and citations are subject to the terms of this Motion and Settlement Agreement, with Kaiser agreeing to pay a $52,000 penalty for one and $20,000 for the other.

This settlement and the changes to the proposed penalties reflect that vagaries of litigation, and a compromise between the parties in light of the litigation.

4. The payment of the total sum of $513,000 by Kaiser Aluminum is appropriate and reflects due consideration of the nature of its conduct and the penalty criteria contained in §110(i) of the Act. The parties agree that the mine is a large facility and that the operator is a large company. The penalties, to be paid in twelve equal payments within one year from thirty days after the approval of this settlement motion, will not adversely affect the operator's ability to continue in business. The operator has a favorable history of prior violations and has promptly abated the cited conditions. Good faith abatement is also demonstrated by the prospective steps that the operator has agreed to take in this matter as set forth in Paragraph 9 below.

5. For the sole purposes of this settlement motion the parties agree that the gravity associated with these violations is as stated in the citations and orders, including the amendment to Order No. 7881950.

6. This agreement is entered into by both parties in lieu of continued litigation under the Mine Act, other than the issues raised in Kaiser's pending Petition for Certiorari, 214 F.3d 586 (5th Cir. 2000). The parties have taken different positions regarding the validity of the citations and orders and the appropriate level of negligence. The Secretary has agreed to modify the alleged negligence levels of some of the above listed citations and orders as set forth in Paragraph 3, to

reflect a high level of ordinary negligence. The parties agree that for all purposes except those delineated in *Secretary v. Amax Lead Co.*, 4 FMSHRC 975 (FMSHRC 1982), Kaiser does not admit either the validity of the citations and orders, the alleged levels of negligence, or the facts alleged by the citations, orders, or any and all reports of MSHA or its personnel. The parties further agree that for purposes of all actions except for actions to which the United States and/or the Secretary of Labor is a defendant, nothing herein shall be construed as an admission by Kaiser. The parties agree that for all purposes except those delineated in *Secretary v. Amax Lead Co.*, 4 FMSHRC 975 (FMSHRC 1982), Kaiser and the Secretary are entering this agreement without prejudice to their rights to make future arguments or raise any defenses in any other cases, including the pending Petition for Certiorari (214 F.3d 586 (5th Cir. 2000) and, for all purposes except those delineated in *Secretary v. Amax Lead Co.*, 4 FMSHRC 975 (FMSHRC 1982), Kaiser and the Secretary retain their right to assert in any subsequent action that conditions or practices cited in the original citations, or the amended citations or orders, may or may not be violations of standards or provisions of the Mine Act.

7. Pursuant to Section 110(c) of the Mine Act, two parties who had reason to know regulatory violations existed, received personal civil penalties of $12,500 each. The two parties exercised their right to contest the proposed penalties and agreed to pay them, without admissions, pursuant to the terms of the attached settlement motions.

8. The Secretary will not take any further action relating to the actions, events, or violations at issue in these proceedings against Kaiser or its corporate agents, nor will she refer any further action against Kaiser or its corporate agents relating to the actions, events, or violations at issue here to any other agency. This settlement agreement is acknowledged by the parties to be a global and final resolution of all outstanding

and potential matters resulting from or related to the July 5, 1999 event and the Secretary's investigation thereof, except for the issues raised in Kaiser's pending Petition for Certiorari, 214 F.3d 586 (5th Cir. 2000). Further, upon request by Kaiser, the undersigned counsel for the Secretary will inform any other government agency or department of the finality of this settlement.

9. As indicated in the attached document (Exhibit A), the respondent has agreed to undertake a program of prospective efforts, thereby demonstrating additional good faith in abatement of the conditions at issue in these proceedings.

WHEREFORE, the Secretary moves for approval of this proposed settlement and an order requiring compliance with the payment plan agreed to herein.

DATED: December 8, 2000

Respectfully submitted,

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# EXHIBIT A

[Exhibit A sets out engineering, operating, auditing and reporting undertakings of Kaiser]